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Consolidated Laws of New York Annotated

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THE CONSOLIDATED LAWS OF NEW YORK
ANNOTATED

The books of this edition are arranged and numbered as follows:

1. Report of Consolidators and Treatise on Statutes and Statutory Construction
2. Constitution of New York Annotated, Constitution of the United States, Declaration of Independence and Magna Charta

3. Agricultural
4. Banking
5. Benevolent Orders
6. Business Corporations
7. Canal
7a. City Local Option
8. Civil Rights
9. Civil Service
10. Conservation
11. County
12. Debtor and Creditor
13. Decedent Estate
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16. Education
17. Election
18. Executive
18a The Farms and Markets
19. General Business
20. General City
21. General Construction
22. General Corporation
22a. General Highway Traffic
23. General Municipal
24. Highway
25. Indian
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28. Joint-Stock Association
29. Judiciary
30. Labor
31. Legislative
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36. Navigation
37. Negotiable Instruments
38. Partnership
39. Penal
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43. Public Buildings
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51. Salt Springs
52. Second Class Cities
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55. State Finance
56. State
57. State Printing
58. Stock Corporation
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62. Transportation Corporations
63. Village
64. Workmen's Compensation

65. Unconsolidated Laws
66. Complete Table of Laws Repealed
67. General Index

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THE CONSOLIDATED LAWS OF NEW YORK, ANNOTATED

AS AMENDED TO THE CLOSE OF THE REGULAR AND EXTRAORDINARY SESSIONS OF THE LEGISLATURE OF 1919

Compiled under the Editorial Supervision of
WILLIAM M. McKINNEY

BOOK 34-A
Mental Deficiency Law

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STATE OF NEW YORK
OFFICE OF THE SECRETARY OF STATE } ss :

In pursuance of the authority vested in me, by section 932 of the Code of Civil Procedure, I, Francis M. Hugo, Secretary of State, hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and in accordance with such section are entitled to be read in evidence.

Given under my hand and the seal of office of the Secretary of State, at the Capitol in the City of Albany, this 30th day of October, 1917.

[L. S.]

FRANCIS M. HUGO,
Secretary of State.

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MENTAL DEFICIENCY LAW

LAWS 1919, CHAP. 633

AN ACT in relation to mental defectives, constituting chapter seventy-one of the consolidated laws.

Became a law May 14, 1919, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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MENTAL DEFICIENCY LAW

CHAPTER 71 OF THE CONSOLIDATED LAWS

Article 1. Short title; definitions (§§ 1, 2).
2. State commission for mental defectives (§§ 3–14).
3. Institutions for the care, training and custody of mental defectives (§§ 15–22).
4. Commitment, custody and discharge of mental defectives (§§ 23–39).
5. Laws repealed; when to take effect (§§ 40, 41).

ARTICLE 1.

SHORT TITLE; DEFINITIONS.

Section 1. Short title.
2. Definitions.

§ 1. Short title. This chapter shall be known as the "Mental Deficiency Law."

§ 2. Definitions. When used in this chapter:

1. "Poor person" means a person who is unable to support himself and having no one legally liable and able to support him;

2. "Indigent person" means a person who has not sufficient property to support himself nor the members of his family lawfully dependent upon him for support;

3. "Institution" means any hospital, school, asylum, colony, building, house or retreat authorized by law to have the care, training or custody of the mentally defective;

4. "Inmate" means a mentally defective person committed to an institution according to the provisions of this chapter;

5. "Mental defective" means any person afflicted with mental defectiveness from birth or from an early age to such an extent that he is incapable of managing himself and his affairs, who for his own welfare or the welfare of others or of the community requires supervision, control or care, and who is not insane or of unsound mind to such an extent as to require his commitment to an institution for the insane as provided by the insanity law;

6. "Commission," when used in this chapter, means the state commission for mental defectives.

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ARTICLE 2.

State Commission for Mental Defectives.

Section 3. State commission for mental defectives.
4. Compensation of commissioners.
5. Removal of chairman by the governor.
6. Office and clerical force of the commission.
7. Official seal.
8. General powers and duties of the commission.
9. Official visits.
10. Regulations and form.
11. Institution districts; how defined.
12. Change of institution districts and reassignment of inmates.
13. Record of inmates.
14. Institutions to furnish information to commission.

§ 3. State commission for mental defectives. The state commission for the care of the feeble-minded is continued and shall hereafter be known as the state commission for mental defectives. It shall consist of three members, one of whom shall be a reputable physician, a graduate of an incorporated medical college with at least ten years' experience in the actual practice of his profession, who shall be chairman of the commission and who shall be appointed by the governor with the advice and consent of the senate for the term of three years. The other members of the commission shall be the fiscal supervisor of state charities and the secretary of the state board of charities.

§ 4. Compensation of commissioners. The chairman of the commission shall receive an annual salary of six thousand dollars. The other members of the commission shall each receive fifteen dollars per day for each day's attendance at meetings, not to exceed one thousand dollars in any one fiscal year.

§ 5. Removal of chairman by the governor. The chairman of the commission may be removed by the governor for cause upon charges preferred in writing, an opportunity having been given him to be heard in his defense at a public hearing.

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§ 6. Office and clerical force of the commission. The commission shall be provided by the trustees of public buildings with a suitably furnished office. The commission may employ a secretary, a psychiatrist or psychologist, and such other employees as may be needed, and fix their compensation within the amount appropriated therefor.

§ 7. Official seal. The commission shall have an official seal. Every process, order or other paper issued or executed by the commission may, by direction of the commission, be attested, under seal by its secretary or by any member of the commission, and when so attested shall be deemed to be executed by the commission.

§ 8. General powers and duties of the commission. The commission shall

1. Administer the law in relation to the custody, care and training of mental defectives;

2. Prepare and keep a record of mental defectives in the state as defined in the preceding article and provide accommodations for all such as require care and training in suitable institutions; and for this purpose the education department and any other state agency shall furnish such aid and information, within its power, as the commission may require;

3. Have power to establish and conduct or to take part with other state departments, municipal corporations and incorporated hospitals in the establishment and conduct of mental clinics in such places and at such times as in their judgment shall seem to be best;

4. Direct the transfer of inmates on the original order of commitment to another state institution for mental defectives where they can be conveniently received, whenever in its discretion, a state institution for mental defectives shall become overcrowded with inmates, or the number of buildings shall be reduced by fire, or for other cause, the expenses of such transfer to be paid for from funds provided for the maintenance of the state institution from which the inmates are transferred;

5. Report annually to the legislature its acts and proceedings for the year ending June thirtieth, last preceding, with such facts in regard to mental defectives as it may deem necessary for the

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information of the legislature, including an estimate of the number of additional beds, if any, that will be required for the accommodation of mental defectives during the ensuing year;

6. Recommend to the legislature when necessary the establishment of new institutions and the type thereof.

7. Determine from time to time the capacity and population of each of the state institutions for mental defectives and incorporate a statement of such capacity in its annual report to the legislature.

§ 9. Official visits. The commission, or a majority thereof, shall visit every state institution for mental defectives jointly or by a majority of the commission and every such private institution by one member of the commission at least once in each calendar year.

The commissioners shall at least once a year at a time to be appointed by the commission meet the managers of such state institutions, or as many of the number as practicable, in conference and consider in detail all questions of management and improvement of the institution, and they or one or more of them, with the managers, shall inspect the institution or such parts thereof as they deem necessary and they shall send to the managers in writing, if approved by a majority of the commissioners, such recommendations in regard to the management and improvement of the state institution as they may deem necessary or desirable. All reports of inspections made by regularly accredited agents of the state board of charities and the fiscal supervisor's office shall be reported in full to the commission for mental defectives.

§ 10. Regulations and forms. The commission shall make such regulations in regard to the correspondence of mental defectives in custody as in its judgment will promote their interests, and it shall be the duty of the proper authorities of each institution to comply with and enforce such rules and regulations. All such mental defectives shall be allowed to correspond without restriction with the county judge and district attorney of the county from which they were committed. The books of record and blank forms for the official use of the institutions, other than books and forms of accounts, shall be uniform and shall be approved by the commission.

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§ 11. Institution districts; how defined. The state commission for mental defectives shall divide the state into as many institution districts as there are state institutions for mental defectives, with the exception of the Syracuse State School for Mental Defectives. Such institution districts shall be so divided that the number of mental defectives in each district shall be in proportion as nearly as practicable to the accommodations which are, or may be, provided by the institution within such district. No county shall be divided in such classification unless more than one of the existing institutions be situated within such county. Whenever the commission finds that it is advisable, it may change the limit of such institution districts. The establishment of a new state institution shall again divide the state into institution districts. Before any change or re-establishment of institution districts shall be made, the board of managers of each state institution affected thereby shall be notified by the commission that they may be heard in regard thereto at a time and place to be specified in said notice.

§ 12. Change of institution districts and reassignment of inmates. When a change or re-establishment of institution districts shall be made, or a new institution district created, the commission shall make a report thereof designating the counties included within each district affected thereby, and file same with the secretary of state, and send a copy to the managers and superintendent of each state institution affected by such change and to each judge of a court of record, each county superintendent of the poor, and each county clerk in the state affected by such change, to be filed in his office.

§ 13. Record of inmates. The commission shall keep in its office, accessible only to the commissioners, their secretary and clerk, except by the consent of the commission or one of its members or an order of a judge of a court of record or of the presiding justice of a children's court, a record of all inmates received in the several state institutions for mental defectives.

§ 14. Institutions to furnish information to commission. The authorities of the several state and private institutions for mental defectives shall furnish to the commission the facts relating to

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inmates in said institutions as the commission may from time to time in the just and reasonable discharge of its duties require of them, with the opinion of the superintendent thereon, if requested. The superintendent or person in charge of such institutions shall at the beginning of each month cause a true copy of the certificates and orders on which defectives shall have been admitted to the institution since the beginning of the preceding month, to be made and forwarded to the office of the commission and, when an inmate shall be discharged, paroled, transferred or shall die therein, such superintendent or person in charge shall send the information to the office of the commission in accordance with the forms prescribed by it at the beginning of the following month or at such earlier date as the commission may require.

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ARTICLE 3.

Institutions for the Care, Training and Custody of Mental Defectives.

Section 15. State institutions.
16. Private institutions.
17. Colonies.
18. Managers of state institutions for mental defectives; appointment and removal.
19. General powers and duties of board managers.
20. Superintendents of state institutions for mental defectives; appointment and removal.
21. General powers and duties of superintendent.
22. General powers and duties of treasurer.

§ 15. State institutions. The State institution for feeble-minded children at Syracuse, Onondaga county, is hereby continued and shall hereafter be known as the Syracuse State School for Mental Defectives. This institution shall be maintained as a school and shall be limited as far as possible to children who are of a school age and who are capable of being benefited by instruction. The asylum established at Newark, Wayne county, known as the State Custodial Asylum for Feeble-Minded Women, is hereby continued as a body corporate and shall hereafter be known as the Newark State School for Mental Defectives. The asylum established at Rome, Oneida county, for the custody, maintenance and training of the custodial class of feeble-minded persons and idiots, known as the Rome State Custodial Asylum, is hereby continued and shall hereafter be known as the Rome State School for Mental Defectives. The institution at Thiells, Rockland county, known as Letchworth Village, is hereby continued.

§ 16. Private institutions. No mental defectives shall be cared for in a private institution unless such private institution shall be approved by the commission and shall have been given a license to conduct an institution for mental defectives, and such private institution so licensed shall be under the supervision and subject to the rules and regulations of the commission.

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§ 17. **Colonies.** Whenever in the judgment of the superintendent and the board of managers of any state institution for mental defectives there is a group of inmates in such institution of such a character that their interests and the interests of the state would both be better served through their colonization outside of such institution and if such colony can be established without damage to private property or detriment to the public welfare these facts may be brought to the attention of the commission and if the commission shall approve, it may authorize the superintendent with the approval of the board of managers to establish such a colony. Strict account shall be kept by the treasurer of the institution of the cost of the administration of such colony, of the earnings and expenses thereof, of the wages of the inmates and any other direct compensation paid to them, and of all financial transactions of such colony, such accounts to be kept in a manner prescribed or approved by the fiscal supervisor and the state comptroller. All monies received by each colony other that the direct compensation of inmates from sources other than the state shall be paid on or before the fifth day of each month to the state treasurer. The treasurer of the institution shall render to the fiscal supervisor and to the state comptroller on or before the fifteenth day of each month a verified detailed statement of all receipts and expenditures of each colony for the preceding month, in such form as the fiscal supervisor and the state comptroller may prescribe or approve. The earnings in wages or other direct compensation of the inmates of each colony shall be paid over to the treasurer of the institution who shall keep account of them in a common fund and deposit the monies received at least weekly in an account at interest, in his name as trustee of such fund, in a bank or banks to be designated by the state treasurer and the state comptroller. Such treasurer shall keep strict account of the earnings of each inmate of such colony. The commission shall make rules from time to time in respect to the disposition of such earnings and as to what portion if any shall be paid to the state as maintenance reimbursement and as to what portion if any shall be paid to the inmate earning such wages or compensation or set aside for the use or benefit of such inmate and what portion if any may be used for the common benefit of the inmates of the institution or of the colony to which the inmate is assigned. Upon discharge from the institution of any inmate

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having a balance of earnings to his credit the superintendent shall determine whether such balance shall be immediately paid over to such discharged inmate or his guardian or shall be held in trust by the treasurer of the institution until such time as in the judgment of the superintendent on authorization by the commission it would serve the best interests of such inmate to pay to him or to his guardian such balance or any part thereof. All such colonies shall be open to the inspection of the members of the state commission for mental defectives and its agents and to the legally authorized agents of the state board of charities, and in so far as the financial accounts and supplies of such colonies are concerned, they shall be open to the inspection of the fiscal supervisor, the state comptroller or any authorized agents from their offices. The superintendent of an institution shall report to the state commission for mental defectives as often and as fully as it may require such facts regarding his colonies as the commission shall order. Upon the request of the commission the superintendent shall discontinue such colony or colonies.

§ 18. Managers of institutions for mental defectives. Each state institution shall be under the control and management of a board of managers, subject to the statutory powers of the commission. The governor shall appoint each such board, with the advice and consent of the senate, to consist of seven members. In the discretion of the governor, persons of either sex may be appointed as managers of such institutions. The terms of office of said managers shall be seven years and they shall be so appointed that the terms of one of the members of each shall expire on the first Tuesday of February of each year. All vacancies shall be filled by the governor and the person appointed to fill a vacancy in the board of managers of any institution shall hold office for the remainder of the term of the person whom he succeeds. Such managers shall serve without compensation but shall be entitled to their actual and necessary traveling expenses in attending meetings of the board of which they are managers, or in the performance of other duties authorized by the commission and approved by the fiscal supervisor and the comptroller. The governor shall have power to remove any member or members of the board of managers for cause after an opportunity to be heard.

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Boards now consisting of less than seven members shall be enlarged by additional appointments to be made before the end of the fiscal year. All persons now serving as members of boards of managers of state institutions for mental defectives shall be eligible to reappointment as managers in the discretion of the governor. If any manager fails for the period of three months to attend the regular meetings of the board of which he is a member, the secretary of the board shall notify the governor of such absence with any explanation thereof which may be submitted by such manager and, unless the governor shall, within thirty days thereafter, notify the secretary that he has excused such manager for such absences, the office of such manager shall be deemed to be vacant, and if any manager fails for one year to attend such regular meetings his office shall forwith become vacant. When any such vacancy shall occur the board by resolution shall so declare, and a certified copy of such resolution shall forthwith be transmitted by the board to the commission and to the governor. In the month of January in each year the secretary of the board of managers shall transmit to the governor a statement showing the record of attendance of each manager at meetings of the board, the number and dates of visits to the institution with a statement of any other work for the institution performed by such manager which such manager may request to have transmitted to the governor.

§ 19. General powers and duties of boards of managers. The board of managers shall

1. Have the general direction and control of all the property and concerns of the state institution, take charge of its general interests and see that its design is carried into effect, according to law and its by-laws, rules and regulations;

2. Establish by-laws, rules and regulations, subject to the approval of the state board of charities and of the state commission for mental defectives for the internal government, discipline and management of the institution, and for scientific study into the causes and prevention of mental defect.

3. Maintain an effective inspection of the state institutions, for which purpose a majority of the managers shall visit the institution at least monthly and at such other times as may be prescribed in the by-laws. The superintendent or other officer

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in charge shall admit such managers or manager into every part of the institution and its buildings and exhibit to them on demand all the books, accounts and writings belonging to the institution and pertaining to its interests, and furnish copies, abstracts and reports whenever required by them;

4. Annually on or before the fifteenth day of January report to the legislature for the preceding fiscal year the affairs and condition of the institution with full and detailed estimates of appropriations required for maintenance and ordinary uses and repairs, and of special appropriations, if any, needed for extraordinary repairs, renewals, extensions, improvements, betterments or other necessary objects. Such report shall be submitted previous to the first of January of each year to the state commission for mental defectives.

5. If lands are required for the use of the institution, acquire the same by purchase, gift or condemnation; subject to the approval of and within appropriations therefor granted by the legislature.

6. Take and hold in trust for the state any grant or devise of land or any donation or bequest of money or other personal property, to be applied to the maintenance and education of mental defectives and the general use of the institution;

7. Officers. The board of managers shall appoint a president, a secretary and a treasury.

§ 20. Superintendents of state institutions for mental defectives; appointment and removal. The state commission for mental defectives, pursuant to the civil service law and rules and regulations of the state civil service commission, shall appoint, for each state institution subject to the approval of the board of managers thereof as often as a vacancy shall occur therein, a superintendent. Whenever a vacancy shall occur in the office of superintendent of any such institution, the commission with the approval of the board of managers of such institution may transfer to such position the superintendent of any other such institution, subject to the civil service law and subject to the consent of the board of managers of such other institution.

The superintendent may be removed by a vote of a majority of the board of managers for cause stated in writing after an opportunity has been given him to be heard thereon, and such action

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when approved by the commission shall be final. Pending the investigation of any charges against a superintendent and the decision thereon the board of managers may suspend such superintendent. The commission may prefer charges of misconduct or incompetency against any superintendent to the board of managers of the state institution of which he is a superintendent, and the board shall thereupon investigate the truth of such charges.

§ 21. General powers and duties of superintendent. The superintendent shall be a reputable physician, a graduate of a legally incorporated medical college, and shall have had a practical experience and training of not less than three years in the care and treatment of the mentally defective, epileptic or insane. He shall be the chief executive officer of the institution, and shall manage the institution in conformity with rules and regulations adopted by the board of managers. He shall appoint the assistant physicians, and all employees, and discharge them when, in his judgment, it may be necessary so to do for the good of the institution. He shall cause full and fair accounts and records of all his doings, and of the entire business and operation of the institution, with the condition and prospects of the inmates, to be kept regularly.

§ 22. General powers and duties of treasurer. The treasurer shall.

1. Give an undertaking to the people of the state with such sureties and in such amount as the board of managers shall require, to be approved by the comptroller, to the effect that he will faithfully perform his task as such treasurer;

2. Have the custody of all monies received from the comptroller for the use of the institution, and all other monies, notes, mortgages and other securities and obligations belonging to the institution;

3. Keep a full and accurate account of all receipts and payments as directed in the by-laws, and such other accounts as shall be required of him by the managers;

4. Receive for the use of the institution all monies which may be due the institution, and any and all sums charged and due to the institution, for the support of any inmate therein, or for actual disbursements made in his behalf for necessary clothing and traveling expenses;

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5. Prosecute an action in his name as such treasurer to recover any sum of money that may be due or owing to the institution;

6. Execute a release and satisfaction of a mortgage, judgment or other lien in favor of the institution when paid so that the same may be discharged from record.

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ARTICLE 4.

COMMITMENT, DISCHARGE AND PAROLE OF MENTAL DEFECTIVES.

Section 23. Scope of article.
24. Procedure for commitment of mental defectives.
24-a. Procedure relative to diagnosis and commitment of mentally defective persons before or after trial.
25. Qualified examiners.
26. Certificate of mental defect.
27. Petition.
28. Services of notice.
29. Hearing.
30. Order of commitment to institution.
31. Emergency care.
32. Voluntary admission to institutions for mental defectives.
33. Costs of commitment.
34. Review of proceedings and order of commitment.
35. Habeas corpus.
36. Pay patients at state institutions for mental defectives.
37. Discharge of institution inmates and payment of expenses.
38. Paroles.

§ 23. Scope of article. From and after the taking effect of this chapter no mental defective shall be sent to or discharged or paroled from any state or private institution for mental defectives except as hereinafter provided, except that commitments by the county superintendents of the poor or other officer acting in that capacity, or the commissioner of public charities of the city of New York, or his deputy designated for that purpose, are hereby continued and admissions to state institutions may be through commitment from the several counties of the state by the county superintendents of the poor of such counties or other officer acting in that capacity, and from the city of New York by the commissioner of public charities of such city or his deputy designated for that purpose. Such commitment, however, shall only be made upon the certificate of two physicians or a physician

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and a psychologist qualified as in this act provided. This certificate shall be the form prescribed by the commission. In the admission of such patients or inmates, the several counties and the city of New York shall, so far as practicable, be entitled annually to the admission of patients or inmates to the said state institutions in the ratio which the population of such counties and the city of New York, respectively, bears to the population of the state as ascertained by the last official census, until such time as provision shall have been made for the care of the mental defectives of the district.

§ 24. Procedure for commitment of mentally defective persons. A judge of a court of record of the city or county, or of a children's court, or a justice of the supreme court of the judicial district in which an alleged mental defective, who is not a person over sixteen years of age in confinement on a criminal charge, resides or may be, adjudging such person to be mentally defective, may order as provided in this article his commitment to an institution for the care, training and custody of mental defectives, or to the guardianship of a relative. In the case of an alleged mentally defective person over sixteen years of age charged with a misdemeanor the judge or justice may, if satisfied that the alleged mental defective is mentally defective, order his commitment to one of the state institutions for mental defectives. Such order shall be accompanied by a verified petition therefor and shall be made only upon a certificate of mental defect made by two qualified examiners, or upon such petition and certificate and after a hearing to determine such question as provided in this article. A mental defective who is not a person over sixteen years of age in confinement on a criminal charge shall be committed only to a state institution for mental defectives or a private institution duly licensed to care for mental defectives or to the guardianship of a relative or other person or persons designated by the court. A mental defective over sixteen years of age charged with a misdemeanor shall be committed only to the Rome state school for mental defectives where a separate building is to be set aside or constructed for the care and training of mental defectives over sixteen years of age charged with a misdemeanor. No mental defective, unless also insane, shall be committed to or confined in a state hospital for the insane but any

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mental defective becoming insane may be committed as an insane person to a state hospital for care, treatment and custody and may be confined therein during the duration of such insanity.

§ 24-a. Procedure relative to diagnosis and commitment of mentally defective persons before or after trial. Any person alleged to be mentally defective within the meaning of this chapter arraigned on a criminal charge may be committed before or after trial or conviction in a hospital or other suitable place selected by the state commission for mental defectives where such a detention hospital has not been provided or a hospital designated to receive them by the county or local authorities of any municipality for a period not to exceed ten days, for examination as to his mental and physical condition, by any court or magistrate. The examination of the alleged mentally defective person must be made by two competent physicians, or a competent physician and psychologist, duly qualified as required by section twenty-five of this chapter. The costs of such an examination shall be determined in manner provided for by section thirty-four of this chapter. The physicians, or the physician and psychologist making the examination of the alleged mentally defective person shall certify and report in writing to the judge or justice who committed the alleged mentally defective person in the form prescribed by the commission for mental defectives and shall state the facts and circumstances upon which the judgment of the examiners is based as is required by section twenty-six of this chapter; and, if such examination discloses that the alleged mentally defective person is of such a nature as to require his supervision, control and care for his own welfare or for his own welfare and for the welfare of others or for the welfare of the community, the judge or justice shall issue an order as set forth in section twenty-four of this chapter. If the report of the examiners shows that the alleged mentally defective person is not mentally defective, the judge or justice shall dispose of the said person according to law.

§ 25. Qualified examiners. The certificate of mental defect must show that such person is mentally defective and may be made by two reputable physicians, graduates of an incorporated medical college, and duly licensed to practice medicine in the

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state of New York who have been in the actual practice of their profession at least three years, or by one such physician and one psychologist who shall have had two full years of post-graduate study in psychology at an incorporated university or college and three years of actual clinical experience. Such examiners shall file with the commission for mental defectives a certified copy of the certificate of a judge of a court of record showing such qualifications in accordance with forms prescribed by such commission.

§ 26. Certificate of mental defect. Such physician or psychologist shall have examined the person alleged to be mentally defective within sixty days next before the granting of the order of commitment or shall make such examination upon order of the court. The date of the certificate of mental defect shall be the date of the last examination. Such certificate of mental defect shall be the form prescribed by the commission for mental defectives and shall contain the facts and circumstances upon which the judgment of the examiners is based and show that the alleged mental defect of the person examined is of such a nature as to require his supervision, control and care for his own welfare or for his own welfare and for the welfare of others or for the welfare of the community. Neither of the examiners shall be a relative of the person applying for the order, nor of the person alleged to be mentally defective, nor any person having any pecuniary interest, directly or indirectly, in the institution to which it is proposed to commit such alleged mental defective. But this shall not apply to members of the medical staff of a state institution for mental defectives.

§ 27. Petition. Any person with whom an alleged mentally defective person may reside or at whose house he may be, or any relative, superintendent of the poor, commissioner of public charities or other poor law officer, superintendent or principal of any school may apply for such order by presenting a verified petition containing a statement of the facts upon which the allegation of mental defect is based, and because of which the application for the order is made. Such petition shall set forth clearly the facts and circumstances, such as lack of proper guardianship, supervision, control, care or support, or other causes, which make it unsafe for the alleged mental defective to be

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without supervision, care, training, control or custody and shall give the name and residence, or state that such name and residence are unknown to the petitioner, of some person, if such there be, actually supervising, or caring for, or supporting the alleged mental defective, or the name and residence of at least one person, if such there be, who is legally chargeable with such supervision, care or support, or that the name and residence of such a person are unknown. Such petition may be accompanied by the certificate of mental defect prescribed in the preceding section.

§ 28. Service of notice. Notice of such petition shall be served personally upon the person alleged to be mentally defective if of legal age and upon the husband or wife, father or mother, or next of kin, if there be any of such residing within the county, and, if not, upon the person with whom the alleged mentally defective person may reside or at whose house he may be. The judge or court to whom such petition is made shall, if no certificate of mental defect is presented, order such examination and certification as is provided in the preceding section. The judge or court to whom such petition is made may, if no demand is made for a hearing in behalf of the alleged mental defective, proceed forthwith to determine the question of mental defect and, if satisfied that such person is mentally defective, may immediately issue an order for the commitment of such person to an institution for mental defectives or to guardianship whereby he will be under the supervision and in the care or custody of such relative or other person or persons as the judge or court may designate. Such judge or court may dispense with such personal service or may direct substituted service to be made upon some person designated by him. The judge or court may, in his discretion, require other proofs in addition to the petition and certificate of mental defect.

§ 29. Hearing. Upon the demand of any relative or near friend in behalf of such alleged mentally defective the judge shall, or he may upon his own motion, issue an order directing the hearing of such petition before him at a time not more than seven days from the date of such order, which shall be served upon the parties interested in the petition and upon such other persons as the judge, in his discretion, may name. Upon such day, or upon

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such other day to which the proceedings shall be regularly adjourned, he shall hear the testimony introduced by the parties and examine the alleged mental defective in or out of court and render a decision in writing as to the person's mental defect. If the judge cannot hear the petition he may, in his discretion, issue an order directing the hearing before a referee named therein, who shall hear the testimony and report the same forthwith, with his opinion thereon, to such judge who shall, if satisfied with such report, render his decision accordingly. If it be determined that such person is not mentally defective the judge shall declare the record sealed and open only to inspection upon the order of a county judge or a justice of the supreme court.

§ 30. **Order of commitment to institution.** If it be determined that such person is mentally defective, the judge shall forthwith issue his order committing him to a state institution for the care, training or custody of mental defectives or issue other orders as is provided in this section. If the commitment be made to a state institution for mental defectives the order shall be accompanied by a written statement of the judge as to the financial condition of the mental defective and of the persons legally liable for his maintenance as far as can be ascertained. The superintendent of the state institution shall be immediately furnished with such commitment. The persons so committed shall be taken to the institution by one of their own sex who has been designated for that purpose by the committing officer. Male patients under sixteen years of age may be taken to the institution by a female attendant. The petition of the applicant, the certificate of mental defect, the order directing a further hearing as provided in this section, if one be issued, the decision of the judge, and the order of commitment shall be presented in such form as the commission shall prescribe at the time of commitment to the superintendent or person in charge of the state institution to which the mentally defective person is committed and a verbatim copy shall be forwarded by such superintendent or person in charge of the institution and filed in the office of the commission for mental defectives. Whenever a mental defective shall be committed to a private institution, said institution shall be of the same religious faith as the parents of the said mental defective.

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§ 31. Emergency care. Notwithstanding the requirements of this article for the commitment by order of the court of alleged mental defectives, in a case where the conditions of such person or the circumstances existing with reference to the care, supervision or control are such that his welfare or the welfare of others urgently requires his immediate care or custody or where there is no other proper place for his care or custody, he shall be forthwith received by a state institution authorized by law to care for the mentally defective or a detention hospital provided by the county for such purpose, in which case, such person shall be so received upon a petition made by a person authorized by this article to apply to a court for an order of commitment and upon a certificate of mental defect executed by two qualified examiners after the examination and in the manner provided in this article. By virtue of such petition and such certificate of mental defect such a person may be retained in such institution for a period not to exceed twenty days. The certificate of mental defect in such cases must contain adequate reasons why such person should be immediately received in an institution for care or custody.

§ 32. Voluntary admission to institutions for mental defectives. Pursuant to rules and regulations established by the commission, the superintendent or person in charge of any institution authorized by law to care for mental defectives, except institutions for defective delinquents, may receive and retain therein as a person suitable for care, training or custody, any minor not in confinement on a criminal charge, upon the written application therefor of the parent or legal guardian of such mental defective or the superintendent of the poor, commissioner of public charities or poor law official of the county in which the mental defective resides or may be found, accompanied by a certificate of mental defect made by one reputable physician or qualified psychologist. A person thus received at such an institution shall not be detained under such voluntary agreement more than ten days after the official, parent or legal guardian who made application for his admission shall give notice in writing of his intention of removing such mental defective, and shall have complied with the requirements prescribed by the commission. At any time during the period in which an inmate thus received is in an institution for mental defectives any person authorized to apply to

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the court for the commitment of an alleged mental defective as provided in the previous sections of this chapter may make such application. The superintendent or person in charge of any institution to which a mental defective shall be admitted under the provisions of this section shall, within three days after the admission of an inmate by such voluntary agreement, forward to the commission a copy of such agreement and such other information required by rules and regulations which may be established by the commission.

§ 33. Costs of commitment. The costs necessarily incurred in determining the question of mental deficiency of a person under this article, including the fees allowed by the judge or justice ordering the commitment to the examiners or witnesses called by him and other necessary expenses, and in securing the admission of such person into an institution, and the expense of providing proper clothing and proper medical care and nursing for such person in accordance with the rules and regulations adopted by the commission for mental defectives, shall be a charge upon the county from which he is committed. If the person sought to be committed is not a poor or indigent person, the cost and expenses of the proceeding to determine his mental defficiency and secure his commitment paid by any county or city may be collected by it from the estate of such person, or from the persons legally liable for his maintenance, and the same shall be a charge upon the estate of such person, or the same shall be paid by the persons legally liable for his maintenance. The compensation or fees and expenses of all officers for duties performed with respect to the commitment of persons who are, or are alleged to be, mentally defective, as required by this chapter, shall in each case be determined and allowed by the judge or justice ordering the commitment or hearing the application, and shall be a charge upon the county in which such persons reside or are found. If the fees and expenses so determined and allowed are a charge upon the county such judge or justice shall issue a certificate, stating the amount thereof, to whom to be paid, which shall be presented to the county treasurer and be paid by him out of any monies available for such purpose. The county treasurer shall report the amount paid by him on account of such fees and expenses to the board of supervisors and to the commission. If there be no

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money in the county treasury available for the payment of such fees and expenses, the county treasurer is hereby authorized and directed to borrow on the credit of the county a sum sufficient to pay such fees and expenses, and may issue certificates of indebtedness therefor, the principal and interest of which, at a rate not exceeding six per centum per annum, shall be binding upon the county and paid in the same manner as other county obligations; but in the city of New York all fees of examiners, witnesses and officers appointed or called by a judge of any court in the city for the purpose of determining the question of the mental deficiency of any person, and not heretofore paid, may be audited and allowed in the first instance either by the judge or justice appointing the examiners or by the comptroller of the city and paid by the chamberlain of the city on the warrant of the comptroller from the court fund and charged to the proper county within the city.

§ 34. Review of proceedings and order of commitment. If a person ordered to be committed, pursuant to this chapter, or any relative or friend in his behalf, be dissatisfied with the final order of a judge or justice committing him, he may within thirty days after the making of such order obtain a hearing and a review of the proceedings already had and of the order of commitment, upon petition to a county judge or a justice of the supreme court in the judicial district in which the original commitment was made other than the justice making the order of commitment, who shall cause a jury to be summoned as in the case of proceedings for the appointment of a committee for an insane person where the question of fact arising from the competency of the person is tried by a jury and shall try the question of the mental defect of the person so committed in the same manner as provided in said proceedings. If such petition for rehearing and review be made by any other than the person so committed or the father, mother, husband, wife or child of such person, or the person with whom the person committed was residing at the time of such commitment or accustomed to reside, before such rehearing or review shall be had, the petitioner shall make a deposit or give a bond to be approved by a county judge or a justice of the supreme court for the payment of the costs and expenses of such rehearing, review and determination of the

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question of mental deficiency by a jury as aforesaid, if the order of commitment is sustained. If the verdict of the jury be that such person is not mentally defective the judge or justice shall forthwith discharge him, but if the verdict of the jury be that such person is mentally defective the judge or justice shall certify that fact and make an order of recommitment as upon the original hearing. Such order shall be presented at the time of the recommitment of such mental defective to, and filed with, the superintendent or person in charge of the institution to which the mental defective is committed, and a copy thereof shall be forwarded to the commission by such superintendent or person in charge and file in the office thereof. Proceedings under the order shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court, and made upon a notice and after a hearing, with provisions made therein for such temporary care or confinement of the alleged mental defective as may be deemed necessary. If a judge or justice refuse to grant an application for an order of commitment of a mental defective proved to be dangerous to himself or others if at large, he shall state his reasons for such refusal in writing, and any person aggrieved thereby may obtain a rehearing and review and the determination of the question of mental defect by a jury in the same manner and under like conditions as from an order of commitment.

§ 35. Habeas corpus. Anyone in custody as a mentally defective person is entitled to a writ of habeas corpus upon a proper application made by him or some friend in his behalf in the judicial district in which the commitment was made. Upon the return of such writ the fact of his mental defficiency shall be inquired into and determined. The history of a patient as it appears in the case records shall be given in evidence, and the superintendent or medical officer in charge of the institution wherein such person is held in custody, and any other proper person, shall be sworn touching the mental condition of such person. Where a second or subsequent application is made for the discharge from custody of the same patient, any party to the proceeding may introduce in evidence any testimony in relation to the mental condition of such patient received upon any former hearing or trial, together with all the exhibits introduced

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in evidence upon such hearing or trial in connection with such testimony without calling the witnesses who gave such testimony; such evidence to have the same force and effect as if such witnesses had been called.

§ 36. Pay patients at state institutions for mental defectives. The commission may authorize the superintendent of a state institution to admit thereto under special agreement mental defectives who are residents of the state other than poor and indigent mental defectives when there is room for such persons therein. Such inmates when so received shall be subject to the general rules and regulations of the state institution. The commission shall fix the rates to be charged for the maintenance of such mental defectives in a state institution, the payment of which shall be made in advance, and bills therefor shall be collected quarterly. The superintendent may recommend to the commission the removal of such mentally defective inmates to duly licensed private institutions and the commission shall have power in its discretion to order such removal.

§ 37. Discharge of state institution inmates and payment of expenses. Any inmate may be discharged from the institution by the superintendent with the consent of the board of managers at one of their regular meetings and after the presentation to them of reasons for such discharge and as soon as possible thereafter the fact of such discharge, together with the reasons therefor and the statement of the physical, mental and moral condition of the inmate, shall be reported to the state commission for mental defectives. When the managers shall direct an inmate to be discharged from a state institution, the superintendent thereof may return him to the county from which he was sent, and the superintendent of the poor or county commissioner of charities of such county shall audit and pay the actual and reasonable expenses of such return. If any town, county or person is legally liable for the support of such inmate, such expenses may be recovered by action in the name of the county by such superintendent of the poor or county commissioner of charities. If such official neglect or refuse to pay such expenses on demand, the treasurer of the institution may pay the same and charge the amount to the county; and the treasurer of the county shall pay

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the same with interest after thirty days out of any fund in his hands not otherwise appropriated; and the supervisors shall raise the amount so paid as other county charges.

§ 38. **Paroles.** Where an inmate is paroled to a relative, legal guardian or other person, such relative, legal guardian or other person must be of the same religious faith as that of the parents of such mental defective. An inmate of any of the state institutions may be permitted by the superintendent with the consent of the board of managers to leave the institution on parole and remain in the custody of a parent, relative, legal guardian or other person. At any time during such parole, upon evidence satisfactory to the superintendent or to the board of managers or to the commission, that the parole terminate, such inmate must be returned to the institution. The above provision for parole shall not include any persons who are under sentence by any court. Every parent, relative or legal guardian to whom such inmate shall be paroled shall report the physical and moral and mental condition of the inmate to the superintendent either in person or by writing as often and as fully as he may require and subject to such rules and regulations as the commission may determine and in case of failure to so report on request the inmate shall be returned to the institution. At any time during the parole the inmate shall be accessible to the parole agent of the institution. The institution paroling a patient shall not be liable in any manner whatsoever for such patient while on parole. Such liability shall devolve upon the parent, legal guardian, relative, or persons to whose care the inmate is paroled or the proper poor official of the municipality in which he may have found domicile.

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ARTICLE 5.

Laws Repealed; When to Take Effect.

Section 39. Laws repealed.
40. When to take effect.

§ 39. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 40. When to take effect. This chapter shall take effect July first, nineteen hundred and nineteen.

Schedule of Laws Repealed.*

Laws of	Chapter	Section
1909.....	57.....	60–69, 80–83, 90–95, 380–391, 455, 460, 461, 480–486.
1909.....	446.....	1–4, 8–11.
1918.....	197.....	All.

* L. 1909, ch. 57, is the State Charities Law, being ch. 55 of the Consolidated Laws.
L. 1909, ch. 446, is an unconsolidated law and relates to the asylum known as Letchworth Village.
L. 1918, ch. 197, added §§ 480-486 to the State Charities Law.

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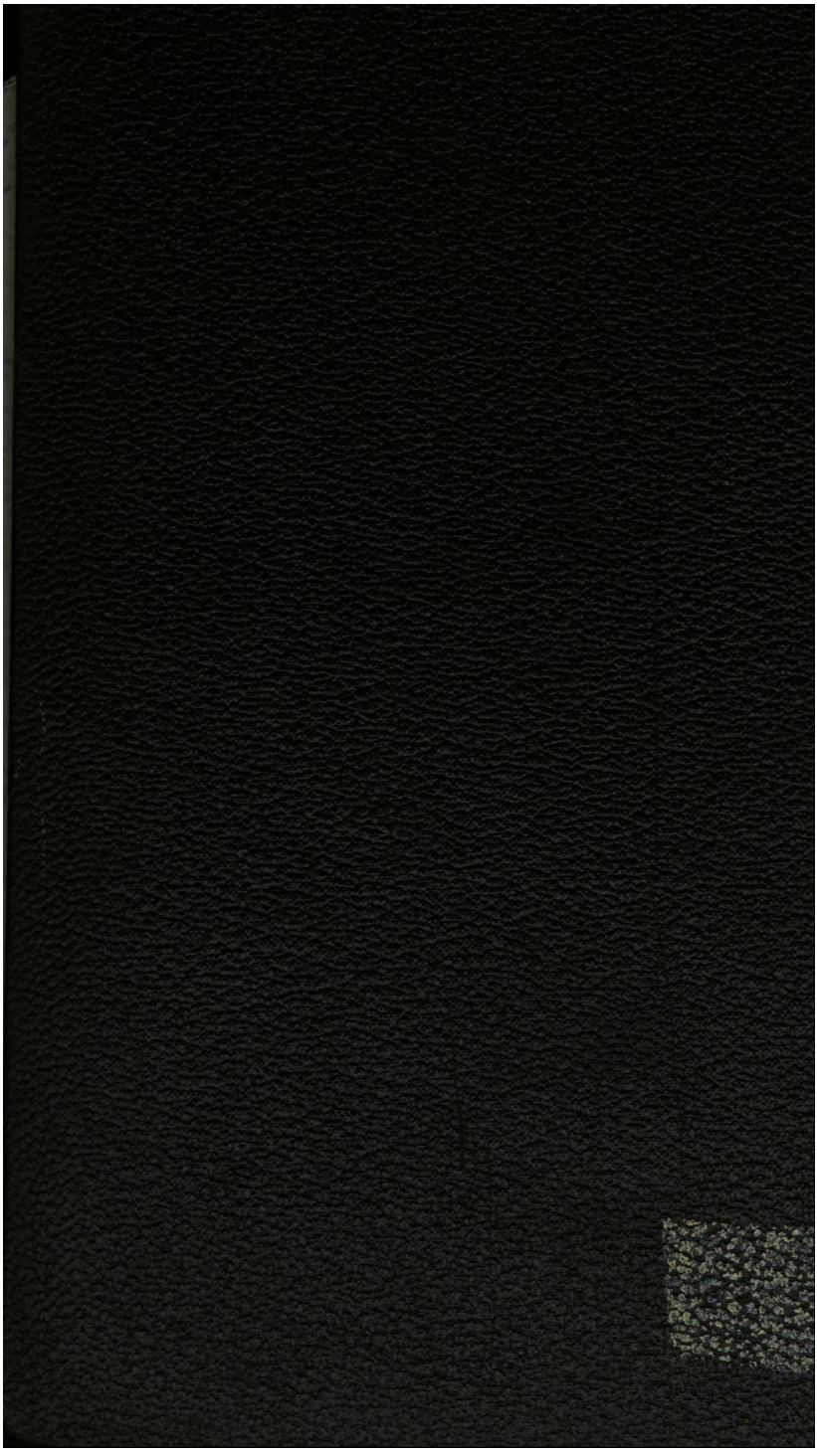

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